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RUEAWJA/DEPT OF JUSTICE WASHDC PRIORITY
RHEFHLC/DEPT OF HOMELAND SECURITY WASHINGTON DC PRIORITY
RUEATRS/DEPT OF TREASURY WASHDC PRIORITY
RUCPDOG/USDOC WASHDC PRIORITY
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C O N F I D E N T I A L SECTION 01 OF 04 BRUSSELS 001515

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SUBJECT: UN TERRORISM SANCTIONS: REFORM SEMINAR

BRUSSELS 00001515 001.2 OF 004

Classified By: USEU EconMinCouns Peter Chase for reasons 1.4 (b) and (d).

SUMMARY

¶1. (C) On October 15-16, Belgium sponsored a Seminar on Strengthening the UN Targeted Sanctions through Fair and Clear Procedures⁸ to discuss with UNSC Members and select Member States (mostly from the EU) options for reforming the UNSCR 1267 (Al-Qaida and Taliban) sanctions regime. Many seminar participants expressed the view that without significant additional enhancements to the UN 1267 regime, fairness and transparency, particularly with regard to de-listing procedures, EU and UN Member State domestic courts could strike down Europe's authority to implement UN 1267 sanctions. These Member States are particularly concerned that) absent more robust review of 1267 de-listing petitions in New York) courts will demand to examine the full evidentiary package (including classified information) underpinning UN listings. These States argued that the 1267 regime could collapse unless the UNSC addresses procedural insufficiencies. They also noted the likelihood of negative spillover effects to other UN targeted sanctions programs if the 1267 regime is not reformed, since this regime has historically set precedents and standards for all other UN sanctions programs. END SUMMARY.

INTRODUCTION

¶2. (SBU) Representatives from State (IO, USUN, EEB, and L) and Treasury (TFFC and OFAC) attended the Government of Belgium-sponsored October 15-16 "Seminar on Strengthening the UN Targeted Sanctions through Fair and Clear Procedures" in Brussels. The seminar focused on issues related to UN/Al-Qaida and Taliban sanctions, though participants recognized potential implications for all other targeted sanctions regimes. Discussants on October 15 included representatives from a broad range of governments and academic institutions. Attendance on October 16 was limited to governmental delegations.

¶3. (SBU) In presenting its rationale for hosting the seminar, Belgium highlighted the importance of preserving the legitimacy of the UN counterterrorism sanctions regime ("1267 regime") and strengthening its internal procedures. Underscoring the significance of both, Belgium argued that "all options should be on the table." It offered participants the opportunity to present national and institutional views on targeted sanctions but recalled that only Security Council members would be responsible for negotiating a successor resolution to UNSCR 1267. Later in the seminar, Belgium reminded participants that the role of sanctions was "to protect a model of society based on the rule of law" and that "sanctions that can,t be implemented are useless."

Academics

¶4. (SBU) Professor David Cortright of Notre Dame University provided an overview of the major reform proposals for the 1267 regime currently under debate within the international community. These fell into seven general categories, which helped frame subsequent seminar discussion:

- an enhanced role for the UN,s Al-Qaida and Taliban Analytical Support and Sanctions Implementation Monitoring Team ("Monitoring Team"),
- greater utilization of the Focal Point for de-listings,
- more deliberative de-listing procedures (i.e. modifying 1267 Committee guidelines to change the Committee into a review mechanism),

BRUSSELS 00001515 002.2 OF 004

- a more robust listing process,
 - an impartial panel to review the merits of existing designations,
 - time-limited sanctions,
 - and "a cleaner, leaner list" (i.e., a sanctions regime placing greater emphasis on non-controversial targets, buttressed primarily by open source information).
- Cortright compared the UNSC to a tortoise and sanctions-related court cases to a hare, questioning who would win the proverbial race. He affirmed a widespread reluctance among UN Member States to recognize the legitimacy of the 1267 regime yet cautioned that a binding review panel was not legally viable.

EU Member States and "Like-Minded"

¶5. (C) EU Member States were divided in how far they think the UNSC should go to establish "independent review" of UN 1267 de-listing petitions, but many agreed that a more rigorous de-listing process is essential to convince EU and national courts that legal review of the substantive merits of UNSC decisions on de-listings is not necessary. These States expressed concern that the 1267 regime would be greatly weakened and could eventually collapse unless the UNSC addresses this and other perceived procedural shortcomings. Many participants urged UNSC members to institute significant procedural enhancements to the de-listing process when the UNSC reviews the 1267 regime in December and extends the mandate of its Monitoring Team. They noted the likelihood of negative spillover effects to other UN targeted sanctions programs if the 1267 regime is not reformed, as this regime has traditionally set the pace for all other UN sanctions programs.

¶6. (SBU) "Like-Minded" countries favoring major expansions of due process in the 1267 regime referred often to a Swiss official,s call for "ambitious incrementalism" in the form of an independent review panel. They warned that radical reform would be needed in the future if the UNSC does not

establish a mechanism to conduct independent reviews of de-listing requests now. Liechtenstein argued that courts would judge any future mechanism as a function of its mandate, which should provide for explanations of reasons for listing, counterarguments, dialogue, advisory recommendations, and effective remedy. Sweden distilled this further by underscoring the presence of "contradictory procedures," whereby courts would see evidence of deliberation and differences of opinion in Security Council proceedings. It cautioned against overemphasizing the word "panel" as such, calling instead for contradictory procedures throughout the sanctions process and across the various sanctions programs. Others agreed that an independent panel could be considered an integral organ of the 1267 regime and that the UNSC would not be undermined by its own creations. Switzerland lamented that the issue of an independent body would not go away and that "we might be in meetings like this another five or ten years."

EU Council Legal Service

17. (SBU) Michael Bishop of the Legal Service of the Council of the European Union explained that the European Court of Justice had adopted a view that the EU was an autonomous legal entity. This "dualistic approach" explicitly recognizes international law and EU law as two separate legal orders. As such, European courts consider UN decisions only as secondary matters and do not derogate from their own principles on primary matters, including fundamental rights. (NOTE: UN 1267 sanctions are implemented by the European Commission on behalf of the 27 EU Member States. END NOTE.) Thus far, European courts have not chosen to examine the substantive merits of UN 1267 listings, but have limited their focus to the fairness of sanctions implementation. Their judgments have forced changes to EU institutional mechanisms so that fundamental & due process rights are not denied to litigants (1267 designees). Bishop insisted that autonomous EU prerogatives did not undermine the primacy of

BRUSSELS 00001515 003.5 OF 004

the UNSC. He stressed that the depth of international cooperation on sanctions issues would continue to depend on the recognition of legal standards and principles across jurisdictions. "One can't conclude that more due process in New York would ever appease courts in the EU," he stated in closing.

UN Monitoring Team

18. (SBU) Richard Barrett, Coordinator of the Monitoring Team, told participants that their debate was not just about counterterrorism sanctions but had much more to do with reform of the Security Council and the desire of UN Member States to implement UNSC decisions. He emphasized that the debate was important because the 1267 regime was a test case for other sanctions programs and because the UNSC had no other operational tools. Barrett noted that it was "impossible to imagine" UNSC action against a State not implementing 1267 sanctions. Legitimacy of UN structures was all the more important, he indicated, since the UNSC would "never dictate domestic implementation procedures" to Member States and since the private sector must invest enormous resources to implement sanctions effectively. According to Barrett, "judicial review is not going to happen in New York, and there is no point in talking about it." The Monitoring Team thus believes that the UNSC should not respond directly to court decisions, thereby ceding its authority in practice. Instead, Barrett recommended strengthening individual listings to insulate them from legal challenges.

P5 INTERVENTIONS: RADICAL CHANGES NOT LIKELY

¶9. (C//NF) The UK essentially limited its interventions to questions for clarification purposes. A UK official called for increased political support for UN counterterrorism sanctions, stating, "if we are ambitious in terms of objectives, the procedures will follow." In what was likely a veiled reference to his government's proposed independent review panel, another UK official asked if it was possible "to achieve all of our needs more efficiently through existing mechanisms, or would a new body create more coherence down the road?" No third parties pressed the UK for more details.

¶10. (SBU) Christophe Parisot, France's External Relations Counsellor to the EU, struck a pragmatic tone throughout the seminar, recalling on several occasions that targeted sanctions served dual (i.e. operational and political/diplomatic) purposes. Concerning political and legal challenges, he argued that "we're never going to be ahead of the courts, and the cure may be worse than the disease." He subsequently described as "highly problematic" the concept of an advisory panel and warned against the prospect of public disagreements between such a mechanism and the UNSC. In contrast, France would like to draw more attention to the subject of humanitarian exemptions, potentially via modifications to UNSCR 1452, to improve the image of sanctions programs. Concerning procedural issues, Parisot conveyed France's desire to expand the role of the Focal Point and to consider de-listing requests as formal reviews for the purposes of Paragraph 26 of UNSCR 1822. He argued against time-limited sanctions, stating that the absence of information is no reason to de-list a targeted party, especially when the reasons for its listing remain valid (i.e. when sanctions criteria still apply).

¶11. (SBU) Liu Yuli, Counsellor from China's embassy to Belgium, did not intervene until the final minutes of the conference, attributing her silence to poor English language skills. She then described, in flawless French, China's "constant" position that the UNSC should be prudent and responsible with respect to its use of economic sanctions. According to China, sanctions, whenever appropriate, should involve delayed decisions and minimize effects on third parties. In principle, it supports the review of sanctions programs to avoid having them become dead letter. With

BRUSSELS 00001515 004.3 OF 004

respect to counterterrorism sanctions, however, Liu stressed that the review of the Consolidated List and other existing UNSC commitments would help to deflect criticisms, improve the quality of designations, and strengthen the efficiency of procedural mechanisms. She closed her by calling upon all UN Member States to provide detailed information to the 1267 Committee pursuant to UNSCR 1822.

¶12. (SBU) Russia attended, but did not intervene either day of the seminar.

¶13. (U) This message has been cleared by the U.S. delegation.

MURRAY

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